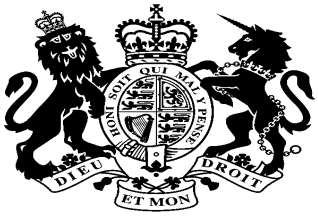

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/00372/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Tuesday 4 February 2014	**On Tuesday 11 February 2014**

Before

MR JUSTICE HICKINBOTTOM
UPPER TRIBUNAL JUDGE REEDS

Between

MUHAMMAD SHOAIB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Manzur, Morgan Hall Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant Mohammed Shoaib was born on 28 December 1986; and, on 31 December 2010, he married Zenib Begum Mehmood, a British citizen.

2. In June 2012, the Appellant applied for entry clearance to the United Kingdom to join, and settle with, his spouse and sponsor. That application was refused by the Secretary of State on 15 November 2012, on the basis that the Appellant had failed to satisfy the requirements of paragraph 281(iii) and (v) of the Immigration Rules, namely that:

> "(iii) each of the parties intends to live permanently with the other as his or her spouse or civil partner and the marriage or civil partnership is subsisting;
>
> …
>
> (v) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds."

3. The Appellant appealed to the First-tier Tribunal and, in a determination promulgated on 28 November 2013, Tribunal Judge Prior found that the requirement in (iii) had been met, but that the requirement in (v) had not. He thus refused the appeal under the Rules, and also found that the refusal of the Appellant's application for leave to enter was not a disproportionate interference with the family life of him or his wife. With permission, the Appellant now appeals against the dismissal of his appeal.

4. Judge Prior dealt with the maintenance issue in paragraph 13 of his determination as follows:

> "Having regard to the documentary evidence before me, including the P60 issued for the sponsor for the tax year to 5th April 2013 recording gross pay of £14,407 I accepted that after deductions of tax and National Insurance the sponsor's net monthly income was £1,027. It was the sponsor's testimony and the evidence of the landlord's letter of 11th November 2013 that she was subject to a monthly rental obligation – discharged by her – of £450. It was the sponsor's testimony that she paid, in addition, £150 per month by way of council tax. This left the sponsor with a disposable income of £427 per month. Since the appellant's representative did not challenge the income support figure for 2012 of £111 for a couple and the onus lay upon the Appellant to satisfy me that, in accordance with the requirements of the Rules, the couple would be able to maintain themselves without recourse to public funds, I adopted the figure of £111 per week. Converting that figure to a monthly figure of £481 I concluded that the sponsor's disposable income of £427 fell short of that required for the couple's adequate maintenance. Accordingly I was not satisfied that the couple met the requirements of the rules."

5. In attractively focused submissions, Mr Manzur on behalf of the Appellant submitted that the judge erred in two respects. First, he misrecorded the sponsor's council tax as £150 per month, whereas she said in her evidence – as

was the case in fact – that it was £115 per month. It is said that that was a simple, but important, slip. Second, the judge failed to take into account the sponsor's savings, held in Nationwide Savings Accounts. Had the judge taken those two matters into account as he should, then it is submitted that he could only have concluded that the Appellant and his sponsor would be able to support themselves without recourse to public funds.

6. On the basis of the evidence before the judge, we are satisfied that the correct amount of council tax was indeed £115, and not £150, per month. The figure of £115 was given by the sponsor when she gave her evidence, but, as conceded by Mr Nath before us, unfortunately misheard and recorded by the judge in his record of proceedings as £150. That the £115 figure was correct is supported by figures taken from the relevant council's website for the appropriate band.

7. We are also satisfied that the sponsor had substantial building society savings. The judge referred to £14,000 (paragraph 7 of the determination), a figure coming from paragraph 8 of the sponsor's statement of 11 November 2013 as the sum then in her main account. However, the relevant time is when the application was made, and, in June 2012, the figure shown in her then sole account was something over £8,500. The supporting building society statements show that that was the lowest amount held by her in savings in the period from June 2012 to the end of 2013.

8. It is well-established that, in assessing whether the Appellant and his sponsor would be able to support themselves without recourse to public funds, where the likely income is insufficient, the shortfall can be met by savings, on the basis that those savings are available to meet the shortfall. By Paragraph 282(a) of the Rules, the period of leave for a spouse who is allowed entry under the relevant parts of paragraph 281 is restricted to 27 months. If the savings are sufficient to meet the shortfall for the period of the initial leave, and there is no reason to believe that the applicant and his sponsor will not be able to meet the maintenance requirements in the longer term, then he is entitled to entry clearance (see, e.g., KA and Others (Adequacy of Maintenance) Pakistan [2006] UKAIT 00065; Jahangara Begum and Others (Maintenance - Savings) Bangladesh [2011] UKUT 00246 (IAC)).

9. The judge found that the sponsor's monthly income net of tax and National Insurance was £1,027. He found that her monthly rent was £450 – evidenced by a letter from her landlord, and uncontentious – and, as we have found, her monthly council tax burden was £115, leaving a disposable monthly income of £462. The income support figure for a couple in 2012 was £481 per month. The disposable income therefore fell short by £19 per month. However, over a period of 27

months, the aggregate shortfall would be only £513. The sponsor's savings were, clearly, more than sufficient to meet that. There is no reason to believe that the couple will not be able to meet the maintenance requirements in the longer term; indeed, the amount and rate of savings suggests that they will continue to be able to support themselves without recourse to public funds in the longer term. But in any event, however that may be, we are quite satisfied that, on the evidence before the tribunal below, they demonstrated an ability to support themselves without recourse to public funds during the course of the next 27 months.

Decision

10. For those reasons, the Immigration Judge erred in law; and his decision is set aside. It is remade as follows: the Appellant's appeal against the Secretary of State's refusal of his application for entry clearance is allowed under the Immigration Rules. As a result, it is unnecessary for us to consider the Appellant's alternative arguments under Article 8.

Signed

The Hon Mr Justice Hickinbottom

Dated 4th February 2014